

described in 422.752, CMS notifies the OIG of this determination. OIG may impose a civil money penalty upon an MA organization as specified at 422.752(c)(2).

(2) *CMS notice of civil money penalties to MA organizations.* If CMS makes a determination to impose a CMP as described in 422.752(c)(1), CMS will send a written notice of the Agency's decision to impose a civil money penalty to include—

- (i) A description of the basis for the determination.
- (ii) The basis for the penalty.
- (iii) The amount of the penalty.
- (iv) The date the penalty is due.
- (v) The MA organization's right to a hearing under subpart T of this part.
- (vi) Information about where to file the request for hearing.

[63 FR 35113, June 26, 1998, as amended at 68 FR 50859, Aug. 22, 2003; 70 FR 4741, Jan. 28, 2005; 72 FR 68725, Dec. 5, 2007; 73 FR 55764, Sept. 26, 2008; 75 FR 19814, Apr. 15, 2010; 79 FR 29959, May 23, 2014]

§ 422.758 Collection of civil money penalties imposed by CMS.

(a) When an MA organization does not request a hearing, CMS initiates collection of the civil money penalty following the expiration of the time-frame for requesting an ALJ hearing as specified in subpart T of this part.

(b) If an MA organization requests a hearing and CMS' decision to impose a civil money penalty is upheld, CMS may initiate collection of the civil money penalty once the administrative decision is final.

[72 FR 68726, Dec. 5, 2007]

§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under 422.752(c)(1), CMS will consider as appropriate:

- (1) The nature of the conduct;
- (2) The degree of culpability of the MA organization;
- (3) The adverse effect to enrollees which resulted or could have resulted from the conduct of MA organization;
- (4) The financial condition of the MA organization;

(5) The history of prior offenses by the MA organization or principals of the MA organization; and,

(6) Such other matters as justice may require.

(b) *Amount of penalty imposed by CMS.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees—up to \$25,000 for each determination.

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees, CMS may calculate a CMP of up to \$25,000 for each MA enrollee directly adversely affected (or with the substantial likelihood of being adversely affected) by a deficiency.

(3) For each week that a deficiency remains uncorrected after the week in which the MA organization receives CMS' notice of the determination—up to \$10,000.

(4) If CMS makes a determination that a MA organization has terminated its contract other than in a manner described under 422.512 and that the MA organization has therefore failed to substantially carry out the terms of the contract—\$250 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100,000, whichever is greater.

(c) *Amount of penalty imposed by CMS or OIG.* CMS or the OIG may impose civil money penalties in the following amounts for a determination made under § 422.752(a):

(1) Civil money penalties of not more than \$25,000 for each determination made.

(2) With respect to a determination made under § 422.752(a)(4) or (a)(5)(i), not more than \$100,000 for each such determination, except with respect to a determination made under § 422.752(a)(5), an assessment of not more than the amount claimed by such plan or MA organization based upon the misrepresentation or falsified information involved.